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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/539,439

04/03/2006

Hugo De Vries

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30/593

7590

04/08/2009

HARNESS, DICKEY & PIERCE, P.L.C.

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

04/08/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/539,439

**Applicant(s)**

DE VRIES, HUGO

**Examiner**

Cheryl Juska

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

1. Applicant's amendment filed January 21, 2009, has been entered. The specification has been amended as requested. The pending claims are 1-24.
2. Said amendment is sufficient to overcome the objection to the specification as set forth in section 1 of the last Office Action (Non-Final Rejection mailed August 20, 2008).

***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1, 2, 4-13, and 15-24 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,601,886 issued to Ishikawa et al. in view of US 6,338,885 issued to Prevost as set forth in section 3 of the last Office Action.
5. Claims 3 and 14 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,601,886 issued to Ishikawa et al. in view of US 6,338,885 issued to Prevost as applied to claims 1 and 12 above, and in further view of US 6,955,841 issued to Weghuis et al. as set forth in section 4 of the last Office Action.

***Response to Arguments***

6. Applicant has not amended the claims in an attempt to overcome the prior art rejections. Rather, applicant traverses said rejection by asserting the examiner has not provided a proper

prima facie case of obviousness under 103 (Amendment, pages 8-9). Specifically, applicant argues that the examiner's statement that the tuft gauge and stitch density would have been obvious (i.e., citation of *In re Aller*, 105 USPQ 233 on page 3 of the last Office Action) is "merely conclusory and is not an 'explicit rational' as required by *KSR Int'l P*" (Amendment, paragraph spanning pages 8-9). In response, it is first noted that the examiner's statement relied upon by applicant is not the entirety of the rationale for the rejection. The recitation of *Aller* preceded the discussion of the teachings of Prevost, which disclosed the recited tuft gauge and stitch density of at least 10 mm (1<sup>st</sup> paragraph, page 3, last Office Action). Hence, applicant's argument is found unpersuasive.

7. Regarding the combination of Ishikawa and Prevost, applicant argues that the references do not suggest the distance between grass tufts in a single row (i.e., tuft gauge) and the distance between adjacent rows (i.e., stitch density) are substantially equal to each other, thereby producing an artificial turf having an even distribution of grass tufts (Amendment, page 9, 1<sup>st</sup> paragraph – page 12, 2<sup>nd</sup> paragraph). In response, while the art may not explicitly teach the tuft gauge and stitch density are selected to produce equivalent distances between tufts within a row and between rows, the claims are held obvious over the prior art because said prior art clearly teaches both stitch density and tuft gauge ranges within the ranges claimed by applicant (i.e., greater than 10 mm). *In re Woodruff*, 16 USPQ2d 1934 states, "The law is replete with cases in which the difference between the claimed invention and the prior art is some range or other variable within the claims....In such a situation, the applicant must show that the particular range is critical, generally by showing that the claimed range achieves unexpected results relative to the prior art range." Hence, absent a showing of criticality from applicant, the present claims are

obvious over the cited prior art since a skilled artisan could have modified the Ishikawa reference with the teachings of Prevost with predictable results. Additionally, one skilled in the art could have readily optimized both the stitch density and tuft gauge ranges of Prevost in order to provide a turf having a uniform surface. Therefore, applicant's arguments are found unpersuasive and the above rejections are maintained.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
9. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, D. Lawrence Tarazano, can

be reached at 571-272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*/Cheryl Juska/*  
Primary Examiner  
Art Unit 1794